

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1363

B

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA

-v-

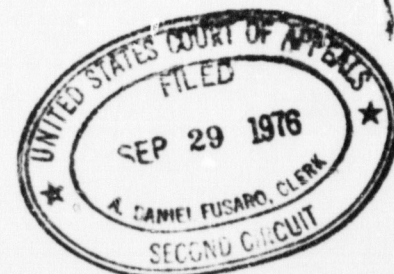
ANTHONY GUARDINO,

Defendant-Appellant

-----X

APPENDIX

NANCY ROSNER, ESQ.  
Attorney for Appellant  
401 Broadway  
New York, New York 10013  
(212) 925-8844



PAGINATION AS IN ORIGINAL COPY



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OFFENSES 207 1 District Office		U.S. vs. <b>75 CR 920</b> <b>ANTHONY GUARDINO</b> defendant		4 12 75 No. of Defendants
U.S. CODE SECTION <b>21-841(a)(1)</b>		OFFENSES <b>Did possess &amp; did distribute cocaine</b>		COURT <b>2</b>
(B) <b>21:841(a)(1)</b>		<b>Did possess with intent to distribute cocaine</b>		<b>1</b>
U.S. Attorney or Asst. <b>Stanley Marcus</b>		Defense: C.A. Ret. Waived, L. Salt. <b>Nancy Rogner</b> <b>401 Broadway</b> <b>N.Y., 92508344</b>		MAG. CASE NO. <b>75M115</b> BAIL RELEASE <input type="checkbox"/> Personal Release <input type="checkbox"/> Unsecured Bail <input type="checkbox"/> Conditional Release Set (000) \$ <b>5</b> <input type="checkbox"/> 10% Dep. <input type="checkbox"/> Surety <input type="checkbox"/> Collateral <input type="checkbox"/> Bail Not Made <input type="checkbox"/> Bail Status Changed (See Docket) <input type="checkbox"/> 3rd Party Custody <input type="checkbox"/> FSA
ARREST <b>6-30-75</b> or U.S. Custody Based on Above Charges		INDICTMENT Information <input type="checkbox"/> <b>12-4-75</b> Warrant <input checked="" type="checkbox"/> Superseding <input type="checkbox"/> Indict/Info <input type="checkbox"/> <b>4/27/76</b>		ARRAIGNMENT <b>1-6-76</b> 1st Plea <b>"</b> Final Plea <b>4/27/76</b> <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input checked="" type="checkbox"/> Guilty
TRIAL Trial Set For Voir Dire <input type="checkbox"/> Trial Began <input type="checkbox"/> Trial Ended		SENTENCE Disposition <b>7/20/76</b> <input type="checkbox"/> Convicted: <input type="checkbox"/> On All Counts <input type="checkbox"/> Acquitted: <input type="checkbox"/> On Case <input type="checkbox"/> Dismissed: <input type="checkbox"/> On Work <input type="checkbox"/> Nolle/Discontinued		

SEARCH WARRANT	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District CJ <input checked="" type="checkbox"/> Held to Answer to U. S. District Court <b>AT: ED NY</b>
Return			<input checked="" type="checkbox"/> Waived <input type="checkbox"/> Not Waived <input type="checkbox"/> Intervening Indictment		
Summons					
Served					
Arrest Warrant	<b>6-30-75</b>	<b>VAC/070A</b>			
COMPLAINT			Tape No.	INITIAL/No.	Magistrate's Initials
OFFENSE (In Complaint)	<b>Sale of one ounce of cocaine</b>				

* Show last names and suffix numbers of other defendants on same indictment/information		V. Excludable Delay		
DATE	PROCEEDINGS	(a)	(b)	(c)
12-4-75	Before JUDD, J - Indictment filed.			
12/12/75	Before PLATT, J.- Case called- deft not present-bench warrant ordered- issued			
1-6-76	Govts Notice of Readiness for Trial filed			
1-6-76	Before PLATT, J. - case called - deft produced in court on a bench warrant - deft arraigned and after being advised of his rights enters a plea of not guilty - bail contd - Bench Warrant vacated - adjd to Jan. 23, 1976 for pleading.			
1-7-76	Bench Warrant retd and filed - executed.			
1-23-76	Before PLATT, J - case called - deft & atty M.Asen present - adjd to 2-20-76 to set a date for trial			
2/20/76	Before PLATT, J.- Case called- adjd to 3/12/76 to set trial date			
3/12/76	Before PLATT, J.- Case called- adjd to 3/26/76 at 10:00 A.M.			
3/26/76	Before PLATT, J.- Case called- deft not present- adjd to 4/9/76 at 2:00 P.M. for disposition			
4/9/76	Before PLATT, J.- Case called- deft and counsel present case adjd to 4/21/76 for trial- bail set at \$5,000.00 P.R.B.			
4/21/76	Before PLATT, J.- Case called- deft and counsel present- case adjd to 4/27/76 at 9:30 A.M.			
4/21/76	Notice of appearance filed			

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DATE	IV. PROCEEDINGS (Continued)	EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
4/27/76	SUPERSEDING INFORMATION AND WAIVER OF INDICTMENT FILED.				
4/27/76	Before PLATT, J. - Case called - deft and counsel present - deft signs waiver of indictment - deft after being advised of his rights by the court and on his own behalf enters a plea of not guilty to the superseding information - sentence adj'd without date bail:cont'd				
6-25-76	Before PLATT, J. - Case called. Deft & counsel present. Deft's motion that sentencing be transferred to another judge adj'd to 7-9-76 at 11:30 A.M.				
7-19-76	Stenographers transcript filed dated 4-27-76				
7/20/76	Before PLATT, J. - Case called. Deft & Counsel present. Deft's motion that the Court excuse itself from sentencing argued - Denied - Minutes of sentencing colloquy ordered sealed. The deft is committed to the custody of the Atty. General or his authorized representative for imprisonment for a term of 6 years pursuant to 18:4205(b)(2) and at the termination of such sentence deft shall serve a special parole term of 10 years.				
7-20-76	Judgment and commitment filed - certified copies to Marshal				
7-23-76	Before PLATT, J - case called - On motion of AUSA Teitler the underlying indictment is dismissed.				
7-23-76	By PLATT, J - Order of dismissal filed				
7/26/76	Notice of Appeal filed. Copies distributed and sent to Court of Appeals.				
7.30.76	Certified copy of Judgment & commitment returned & filed. Deft sent to MCC.				

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

I N D I C T M E N T

- against -

ANTHONY GUARDINO,

Cr. No.  
(T.21, U.S.C., §841(a)(1))

Defendant.

- - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 1st day of May, 1975, within the Eastern District of New York, the defendant ANTHONY GUARDINO, did knowingly and intentionally possess with intent to distribute approximately 52 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1)).

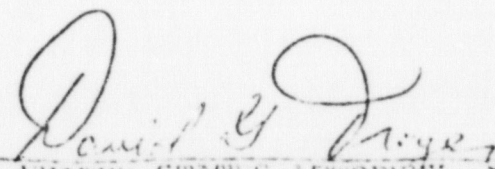
COUNT TWO

On or about the 1st day of May, 1975, within the Eastern District of New York, the defendant ANTHONY GUARDINO, did knowingly and intentionally distribute approximately 52 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1)).

A TRUE BILL.

\_\_\_\_\_  
Foreman.

A-3

  
\_\_\_\_\_  
UNITED STATES ATTORNEY



TRP:SAT:dms  
F. #761578

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

-against-

ANTHONY GUARDINO,

Defendant.

SUPERSEDING  
INFORMATION

Cr. No. 75-1000  
(T. 21, U. S. C., §841(a)(1))

- - - - - X

THE UNITED STATES ATTORNEY CHARGES:

On or about the 1st day of May, 1975, within the Eastern District of New York, the defendant ANTHONY GUARDINO, did knowingly and intentionally possess with intent to distribute approximately 26.91 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1)).

---

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York

TRP:SAT:ed  
F. #761,578

HAND DELIVERY

June 24, 1976

Honorable Thomas C. Platt  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Anthony Guardino  
Docket No. 75 Cr. 920(S)

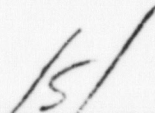
Dear Judge Platt:

I have reviewed the Probation Report in the above matter and note that it fails to record that within the past month Anthony Guardino has threatened to kill the Government informer in this case. Two threats have been communicated to our informant, both of which were received by him through an intermediary. One threat was transmitted directly by Mr. Guardino to the intermediary and the other emanated from another source.

We feel that this information is extremely relevant in your determination of the appropriate sentence to be imposed upon Mr. Guardino on June 25, 1976.

Respectfully yours,

DAVID G. TRAGER  
United States Attorney

By:   
Stanley A. Teitler  
Assistant U.S. Attorney

cc: Nancy Rosner, Esq.  
United States Department  
of Probation



1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA, :

6 -against- :

75-CR-920

7 ANTHONY GUARDINO, :

8 Defendant. :

9 -----X

10  
11 United States Courthouse  
12 Brooklyn, New York

13 July 20, 1976  
14 9:30 o'clock A.M.

15 B e f o r e :

16 HONORABLE THOMAS C. PLATT, U.S.D.J.  
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23 PERRY AUERBACH  
24 ACTING OFFICIAL COURT REPORTER  
25

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Appearances:

DAVID G. TRACER, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: STANLEY A. TEITLER, ESQ.  
Assistant U.S. Attorney

NANCY ROSNER, ESQ.  
Attorney for Defendant



MRS. BOSHER: Good morning, your Honor.

THE COURT: Good morning.

MRS. BOSHER: I take it the Court has had an opportunity to review the Crusco opinion which we caused to be transmitted to chambers, and I think that that opinion controls the results to be reached on the application in this case. A review of the minutes of the plea reveals that we had an agreement with the Government, that because of their office policy they could not affirmatively recommend the imposition of Young Adult Offender treatment, but the Government did agree that it would not oppose such treatment at the time of sentence.

The Government's letter of June 24, 1976, transmits information to the Court, which according to the Government's own language in the concluding paragraph of that letter, the Government feels is extremely relevant to the determination of the appropriate sentence, and one could only conclude from the language transmitted to the Court that that language was designed to indicate to the Court that certainly Young Adult Offender treatment would not be appropriate under the circumstances of the case.

So I think the Government's letter was clearly in violation of both the letter and spirit of the agree-

1 ment that had been reached, and under the circumstances,  
2 we would seek not as the defendant did in the Crusco  
3 case to withdraw his plea, but for specific enforcement  
4 of the plan which had been agreed upon of the substance  
5 of the agreement with the Government, which was simply  
6 a plea in which the Government would not take a position  
7 of the appropriate sentence to be imposed.

8 THE COURT: I will hear from Mr. Teitler. Why  
9 don't you sit down Mrs. Rosner.

10 MR. TEITLER: Your Honor, I believe the transcript  
11 of the plea taken on April 27, 1976, basically speaks  
12 for itself, I am quite confident the Court has refuted  
13 terms of the agreement. In addition, at the time of my  
14 conclusion of reciting what our entire agreement was, I  
15 stated on the record that that was the entire substance  
16 of the agreement, and Mrs. Rosner agreed that was the  
17 entire agreement, and Mr. Guardino also agreed that was  
18 the entire agreement.

19 This Court is well aware of the United States  
20 Attorney's position with respect to sentencing, that in all  
21 but very exceptional cases we make a comment at the time  
22 of sentence as to whether or not the Government feels that  
23 a particular defendant ought to be imprisoned. When Mrs.  
24 Rosner originally approached me concerning our initial  
25 plea bargaining agreement, the prospect of the Youthful



1 Offender treatment did come up, and my explanation was  
2 that certainly I would not say anything at the time of  
3 sentence with respect to any sentence, because that was  
4 not within the purview of the prosecutor's function, at  
5 least in the Eastern District of New York, in the absence  
6 of exceptional circumstances.

7 At the time I made the statement I would not  
8 oppose it and I will not recommend it, and it's the  
9 statement I made throughout these proceedings, and it's  
10 the statement I made to the Court.

11 I might add that the Crusco case, in the  
12 Government's opinion has no relevance whatsoever to the  
13 facts of this case. The Crusco case, there was a natural  
14 misleading as to the maximum sentence that a particular  
15 defendant was to serve. He claimed that he was misled  
16 and, in essence, that was a case where the language of  
17 the agreement of the plea bargaining process became very  
18 convoluted and difficult and required the Third Circuit  
19 to interpret that language. I believe the language used  
20 by the Government and by Mrs. Posner in the agreement is  
21 quite clear. At no time did the Government agree to stand  
22 mute, as in the situation in the Santobello. I never  
23 said I would say anything at the time of sentence. I  
24 think the minutes speak for themselves, your Honor. The  
25 Government's position is clear. It's on the record. I

1 think the fair interpretation of what agreement it was  
2 will lead to the conclusion. If between the time of her  
3 plea and the time of sentence there were threats put on  
4 a human being's life, I believe that that information must  
5 come. I believe it's the prosecutor's obligation to for-  
6 ward that information --- in the absence of any agreement  
7 to the contrary --- to the Court for its consideration.  
8 That's exactly what the Government did here.

9 MRS. ROSNER: \*Your Honor, the only response I have,  
10 I am sure Mr. Teitler does not think we are relying on  
11 part one of the Crusco opinion which ---

12 THE COURT: He understands you are relying on the  
13 second part.

14 MRS. ROSNER: That's the only comment I have to  
15 make, Judge. I think Crusco is very much on its point on  
16 part two and three of the opinion; if the Government's  
17 evidence of criminal conduct is to indict not to break  
18 a promise in connection with a plea.

19 MR. TEITLER: Your Honor, we believe that the  
20 Government's position, the Government didn't breach the  
21 promise. the defendant breached the promise.

22 THE COURT: Well, the Court has read the Crusco  
23 decision, which is a Third Circuit decision reported  
24 just recently. It was argued on March 26, 1976, filed on  
25 March 27, 1976. Santobello against New York, decision of



1 United States Supreme Court called for U.S. 257. United  
2 States against Hallun, decision which is in 472 Feb  
3 Second 179 the Ninth Circuit, and United States against  
4 Paiba, 294 Feb Supp Second 492, all of which was sub-  
5 mitted by Mrs. Rosner in support of her position, the  
6 Court feels that the record in this case is not the same  
7 as the record in those cases including the Crusco case.  
8 As the Court reads the agreement on page seven of the  
9 transcript, which was submitted yesterday, Mr. Teitler's  
10 agreement appears to the Court to be limited to whether  
11 or not it would oppose or be in favor of a Young Adult  
12 Offender treatment, is the way he characterizes it, which  
13 I think is more properly characterized Youth Correction  
14 Act treatment. The precise language to be used was "in  
15 addition to that I have discussed with Mrs. Rosner the  
16 possibility of the defendant being placed on the Young  
17 Adult Offender treatment. I have explained to Mrs. Rosner  
18 that the policy of our office is to neither oppose nor  
19 favor any type of sentencing. But I made it very clear to  
20 Mrs. Posner, in view of that, that the Government would  
21 not oppose such type of sentencing being imposed on Mr.  
22 Guardino." I believe that is the entire sum and substance  
23 of the agreement underlying the plea.

24 Now, as the Court reads back what Mr. Teitler says  
25 it's the policy of the office neither to oppose nor favor

1 any type of sentencing, and in particular, in this  
2 instance, whether he should be treated as a Young  
3 Adult offender or whether he should be treated as an  
4 adult. He did not, as the Government apparently did in  
5 the Crusco case agree to remain silent at the time of  
6 sentencing or to abstain from taking a position on  
7 sentencing. The agreement he made was that he would  
8 take a position with respect to whether he should be  
9 treated under the Youth Corrections Act or he should  
10 not, as I read it. That seems to be the words you both  
11 used. "the entire sum and substance of the agreement,"  
12 and I think given that, plus the fact that here again  
13 as distinguished from the cases cited, the events that  
14 occurred were not foreseeable by the Government. These  
15 events occurred apparently, or the event with respect  
16 to June 24, 1976, occurred after this discussion,  
17 occurred at the time of sentencing of the plea taking  
18 on April 27, 1976.'

19 I think that the Government didn't foreclose it-  
20 self from calling all of the relevant facts to the Court's  
21 attention at the time of sentencing, which is all they  
22 did in their letter of June 24, which they wrote, they  
23 did not even at that time make a recommendation one way  
24 or the other with respect to whatever sentence the Court  
25 would impose.



1           So, that being the fact, the Court feels that the  
2 cases are not relevant or not important with respect to  
3 this particular issue, and the Court, under such  
4 circumstances feels that it would be improper for it to  
5 disqualify itself and improper for it to transfer this  
6 case to another judge at this time.

7           So it will deny your motion.

8           MRS. ROSNER: Thank you, your Honor. Then we are  
9 ready to proceed with the sentence.

10          THE COURT: Do you wish to say something on his  
11 behalf?

12          MRS. ROSNER: I do, your Honor. As I said to  
13 the Court when we began this application several weeks  
14 ago, I thought very seriously about the impact on the  
15 Court of making the application, but I am now at the  
16 position of having done so, and I sincerely hope that  
17 the Court will not attribute to the defendant any form  
18 of malingering or desire to avoid justice because of the  
19 application that I deemed necessary to make.

20          THE COURT: No, no. You are well within your  
21 rights, to make the applications you have made.

22          MRS. ROSNER: Thank you, Judge.

23          The aspect of this sentence that troubles me  
24 particularly, your Honor, and I mean this sincerely, is  
25 Mr. Guardino's psychological background. He is a young

1 man and as the presentence report demonstrates his life  
2 has been marked with a series of events which leads one  
3 inevitably to the conclusion that he has serious  
4 psychological problems. He seems to be a very immature  
5 young man. There seems to be a heavy streak of masochism  
6 which has lead him to problem and problem, and has now  
7 brought him to a point in his life which in every sense  
8 is a real turning point for his future. What I want to  
9 impress on the Court more than anything else are the  
10 consequences of a regular as opposed to a Young Adult  
11 Offender type of sentence for a young man like Mr. Guardino  
12 I don't know if the Court can fully appreciate with the  
13 type of defendants it has day in and day out, what the  
14 atmosphere of a prison is. If you say these stories  
15 in the New York Times, about Lewisburg and the murders  
16 committed over there the past two years, they were murders  
17 of the inmates which prevails in the prison very much as  
18 this courtroom prevails on the society at large.

19 What I am saying, Judge, there is a whole societal  
20 structure in prison in which the bad guys are the powers,  
21 and people going in either fall into the mores and/or the  
22 powers that be or they are outcasts and finks, and their  
23 lives are in jeopardy. It has particular and extreme  
24 relevance for Mr. Guardino, because this young man tried  
25 to, your Honor, to cooperate with the Government. But



1 unfortunately for him, he is in a situation, his family  
2 situation, and his neighborhood situation, where that  
3 kind of cooperation endangers his very life.

4 As your Honor may recollect from an application  
5 also made in connection with this sentence, his father  
6 has recently been incarcerated.

7 [THE COURT: Let me stop you right there, and I have  
8 somewhere in the back of my mind some recollection of  
9 some discussion by --- I think it was with Mr. Adlerstein  
10 as to whether or not this defendant might or might not  
11 be available for some cooperation.]

12 MRS. ROSNER: Well, I am sorry, Judge.

13 THE COURT: That is the fact.

14 MRS. ROSNER: When he was first arrested, Judge,  
15 he attempted to cooperate. He gave information about who  
16 his sources of supply were, but he quickly began to see  
17 that his usefulness wouldn't be merely through giving  
18 information that he would be required at some point to  
19 reveal. He was cooperating, and it was life-threatening  
20 to him, something that was because of his family and  
21 neighborhood situation to do that, and I am saying to you,  
22 your Honor, he is at the point in his life where if  
23 you send him to a regular penal institution now his  
24 very life is going to be endangered. If he goes with the  
25 powers in prison, he is going to be a habitual criminal

1 for the rest of his life. This is what happens. At some  
2 point there's a branching off of a human being's life.  
3 Sometimes it happens before, sometimes it happens in jail,  
4 but there they become one of them, instead one of us. I  
5 have seen it time and again as he is the type of person  
6 who can make that. If you send him to a regular penal  
7 institution, the chances of him coming out and leading  
8 a normal life are virtually nil. I beg your Honor to  
9 give him a Youth Corrections-type treatment so if he has  
10 the will power to do it, he will have the chance there.  
11 If you put him in a prison, his father's a convict, his  
12 father's doing time, he is going to be leaned on by the  
13 big guys in prison, presumed to be one of them, and it's  
14 going to be very hard for it to be any kind of worth-  
15 while experience. It's going to be punitive and nothing  
16 else, and destructive. Any meaningfulness to rehabilita-  
17 tion is gone. Don't put him in a prison, because the  
18 chance of him coming out with any chance to be one of  
19 us instead one of them is going to be nil.

20 THE COURT: Isn't his chance to be one of us, as  
21 you put it, really on whether or not he is going to work  
22 for the Government at this stage?

23 MRS. ROSNER: Your Honor, I really don't think it's  
24 really a fair choice, because it threatens his very life.

25 THE COURT: The Government can protect him.



1           MRS. ROSNER: That is fiction. When the Government  
2 is finished with its informers it turns them loose. It  
3 does nothing for them. You can't hide a human being the  
4 rest of his life.

5           THE COURT: That's not the testimony that you  
6 have heard in this Court over and over again. I have  
7 heard them relocate families and witnesses and protect  
8 them for the rest of their lives. For the rest of their  
9 lives. Isn't that the solution?

10          MRS. ROSNER: It isn't. He's not a major drug  
11 figure who has sources to international drug figures ---

12          THE COURT: I think we have a case here pending  
13 awaiting trial where this man has information; Am I  
14 correct, Mr. Teitler?

15          MR. TEITLER: That is correct, your Honor.

16          THE COURT: As far as I know there's been no  
17 indication at least up to date, that he's going to  
18 give it. I would take one view of this case where he  
19 could take that road, and quite a different view of this  
20 case if you take the road that you suggest.

21          MRS. ROSNER: Judge, I don't think it's appropriate  
22 for the Court to penalize an individual.

23          THE COURT: I am not penalizing him.

24          MRS. ROSNER: For a desire to cooperate and  
25 change his identity and change ---

1 THE COURT: Don't put words in my mouth, please.  
2 It's not a question of penalty. You are asking for the man  
3 to get a break. I am saying the Court would if they  
4 gave the Government a break.

5 MRS. ROSNER: Judge, the only reason he didn't  
6 do that, he perceived it very realistically as a threat  
7 to his life.

8 THE COURT: I do to. I am suggesting that the  
9 Government can protect him against it.

10 MRS. ROSNER: I am suggesting it's not feasible.  
11 First of all, it doesn't work that way, and second of  
12 all people changing their identities and moving elsewhere,  
13 generally, within the nucleus of your family, they keep  
14 in contact. I am saying to you, if this man's father  
15 knows what happens, can the minutes of this proceeding  
16 be sealed so that what I am saying, which I feel I must  
17 say in his behalf at sentencing will not be made known  
18 publicly.

19 THE COURT: I will be glad to seal the minutes.  
20 I am just saying that it seems to me that you are asking  
21 me to treat him as though he had already changed his role,  
22 and the evidence at the moment seems to be to the  
23 contrary. That's all.

24 MRS. ROSNER: I am not asking you to treat him, I  
25 am saying to you, Judge, the evidence that he truly



1 desires to lead a decent, law-abiding life is there,  
2 because he did try to cooperate when he was first arrested,  
3 but he perceived it as a life threat, and I certainly  
4 on a human level couldn't fault him for doing that, and  
5 could very well understand his choice.

6 All I am asking you to do, is you see fit to in-  
7 carcerate him is to do that will be maximized if you  
8 believe in the concept of rehabilitation at all.

9 THE COURT: Mr. Guardino, do you wish to say  
10 anything?

11 DEFENDANT: Just that I am sorry, your Honor,  
12 for what has occurred here, and I want to make amends.

13 THE COURT: Well, I think the Court has  
14 given every indication of how it thinks how amends can  
15 be made, and I am perfectly willing to give you time in  
16 which to consider whether you wish to make amends. If  
17 that's what you feel, that you need more time.

18 THE DEFENDANT: Your Honor, I know of certain  
19 people who have cooperated with the Government and  
20 were promised by the Government they would be protected  
21 and they were not. They winded up dead. And I won't  
22 threaten my life. I am too young to do that.

23 THE COURT: Well, that's your choice, and it's  
24 your approach to the problem. You must understand the  
25 problem you present anyway.

1 THE DEFENDANT: I do, your Honor. I only hope  
2 that your Honor will take into consideration how I  
3 feel about it.

4 THE COURT: I understand your feelings. I mean  
5 I respect your feelings, and I understand your feelings.  
6 You can make it so easy for me or you can make it difficult  
7 for both of us. Do you want to take a week and think  
8 about it?

9 THE DEFENDANT: (No verbal response)

10 THE COURT: You are shaking your head no.

11 THE DEFENDANT: No, your Honor.

12 THE COURT: All right.

13 In view of the seriousness of the offense and the  
14 defendant's prior criminal record, this Court finds that  
15 the Youth Corrections Act is not advisable for this  
16 defendant in this case and accordingly imposes the  
17 following sentence:

18 It is adjudged that the Defendant is hereby committed  
19 to the custody of the Attorney General or his authorized  
20 representative for imprisonment for a term of six years  
21 and that defendant shall become eligible for parole under  
22 18 U.S.C.A. Section 4205(b)(2) at such time as the  
23 Board of Parole may determine and at the termination of  
24 such sentence defendant shall serve a special parole term  
25 of ten years.]



1 MRS. ROSNER: Did you mean 4205(a)?

2 THE COURT: 4205(b)(2).

3 MRS. ROSNER: He will be eligible for parole in  
4 less than one third of the maximum possible sentence?

5 THE COURT: It's a form of 4208 section.

6 MRS. ROSNER: Thank you, Judge.

7 THE COURT: The transcript will be sealed and  
8 available to the attorneys only on request.

9 MRS. ROSNER: Can he say goodbye to his mother,  
10 Judge?

11 THE COURT: Yes.

12 \* \* \*

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 -against- : 75-CR-920

8 ANTHONY GUARDINO, :

9 Defendant. :

10 -----X

11  
12 United States Courthouse  
13 Brooklyn, New York

14 April 27, 1976  
15 11:00 o'clock a.m.

16 B e f o r e :

17 HONORABLE THOMAS C. PLATT,

18 U.S.D.J.

19  
20  
21 *Daniel D. Simon*  
22  
23

24 DANIEL D. SIMON  
25 OFFICIAL COURT REPORTER



1  
2     A p p e a r a n c e s :  
3

4             DAVID G. TRACER  
5                 United States Attorney  
6                 Eastern District of New York

7     BY:   STANLEY TEITLER  
8             Assistant United States Attorney

9             NANCY ROSNER  
10                 Attorney for Defendant

11                     \*   \*   \*  
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1 THE CLERK: United States against Anthony Guardino.

2 MR. TEITLER: Your Honor, we are here today on a  
3 plea of guilty to a superseding information which I am  
4 now filing with the court.

5 THE COURT: The charge is a felony or a misdemeanor?

6 MR. TEITLER: A felony, your Honor.

7 The government has prepared a waiver to the  
8 indictment.

9 THE COURT: Mr. Guardino, in this proceeding, as in  
10 all proceedings, you don't have to say anything to the  
11 information. You can remain silent throughout the entire  
12 proceeding. If you start to say anything at any time  
13 you may stop. Anything you say may be used against you  
14 in this proceeding or any subsequent proceeding. You  
15 are entitled to counsel of your own choice. If you can't  
16 afford counsel, counsel will be assigned for you by the  
17 court.

18 Of course you have Miss Rosner near you as your  
19 counsel and I assume she is counsel of your own choice?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is your full name Anthony Guardino?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: How old are you?

24 THE DEFENDANT: Twenty-four.

25 THE COURT: Twenty-four?



1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: What kind of education or schooling  
3 have you had?

4 THE DEFENDANT: Well, I didn't graduate but I went  
5 up to the twelfth year of high school.

6 THE COURT: Have you recently been under the care  
7 of a physician or psychiatrist, Mr. Guardino?

8 THE DEFENDANT: No.

9 THE COURT: Have you ever been hospitalized or  
10 treated for narcotics?

11 THE DEFENDANT: No.

12 THE COURT: Have you been furnished with a copy of  
13 this superseding information?

14 MRS. ROSNER: Yes, we have, your Honor.

15 THE COURT: Have you read it?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that the charge is  
18 that on or about May 1, 1975 you knowingly and intentional-  
19 ly possessed with intent to distribute approximately 26.94  
20 grams of cocaine hydrochloride, a Schedule II narcotic  
21 drug controlled substance?

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that unless you waive  
25 indictment you may not be charged with a felony unless a

1 grand jury finds by return of an indictment that there  
2 is probable cause to believe that a crime has been  
3 committed and that you committed it?

4 MRS. ROSNER: Do you understand that?

5 THE COURT: Listen carefully. Do you understand  
6 that unless you waive indictment you may not be charged  
7 with a felony unless a grand jury first finds by return  
8 of an indictment there is probable cause to believe that  
9 a crime has been committed, and that you had committed  
10 it? Do you understand that?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: Do you understand if you do not waive  
13 indictment the government may present its case to the  
14 grand jury and request them to indict you as they have  
15 with respect to one indictment already? Do you under-  
16 stand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that a grand jury is  
19 composed of at least sixteen and not more than twenty-  
20 three persons, and that at least twelve grand jurors  
21 must find that there is probable cause and believe that  
22 you committed the crime with which you are being charged  
23 in this superseding information, or you may be indicted  
24 on this charge?

25 Do you understand that?



1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand a grand jury might  
3 or might not indict you for this or some other offense?

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand if you waive indict-  
7 ment by the grand jury the case will proceed against you  
8 on the U.S. Attorney's information just as though you had  
9 been indicted?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you discussed the matter of your  
12 waiver of your right to indictment by the grand jury with  
13 Mrs. Rosner?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand you have the right to  
16 indictment by a grand jury?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have any threats or promises been made  
19 to you to induce you to waive indictment?

20 THE DEFENDANT: No, your Honor.

21 MRS. ROSNER: Your Honor, counsel and the govern-  
22 ment do have an understanding with respect to the plea  
23 being entertained here today. The government has agreed  
24 that the one count contained in the superseding informa-  
25 tion filed with the court will be in satisfaction of any

1 and all of the crimes cognizable under Title 18 or Title  
2 21 which are contained in the investigative report in  
3 this action in the folders of the United States Attorney,  
4 and that would include any sale - - that would include  
5 any sale of a sample of any drugs to government under-  
6 cover agents, a purported assault allegedly made upon the  
7 case agent in this action, and any wire counts or mail  
8 counts or any conspiracy counts which might arise out of  
9 the investigative folder, that is to say that the  
10 defendant will not be a party to any conspiracy action.

11 THE COURT: And also, I suppose, that covers the  
12 two counts in the underlying indictment, 75-CR-920?

13 MR. TFITLER: Yes, it does, your Honor.

14 [In addition to that I have discussed with Mrs.  
15 Rosner the possibility of the defendant being placed on  
16 Young Adult Offender treatment. I have explained to Mrs.  
17 Rosner that the policy of our office is neither to  
18 oppose nor favor any type of sentencing. I made it very  
19 clear to Mrs. Rosner, in view of that, that the govern-  
20 ment would not oppose such type of sentence being  
21 imposed on Mr. Guardino.]

22 I believe that is the entire sum and substance.

23 MRS. ROSNER: And it is the entire sum and  
24 substance of the agreement underlying the plea, your  
25 Honor.



1 THE COURT: Do you understand that, Mr. Guardino?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have any other threats or promises  
4 been made to induce you to waive the grand jury or plead  
5 guilty?

6 THE DEFENDANT: No.

7 THE COURT: Do you wish to waive your right to  
8 indictment by a grand jury?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mrs. Rosner, do you know of any reason  
11 why he shouldn't?

12 MRS. ROSNER: No, I know of no reason why you should  
13 not proceed.

14 THE COURT: Do you so waive indictment, Mr.  
15 Guardino?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You may sign the waiver of indictment  
18 in open court.

19 I will enter an order advising the waiver was  
20 voluntarily made, and it is accepted.

21 All right, Mrs. Rosner, how do you wish him to  
22 plead to the information?

23 MRS. ROSNER: Your Honor, the defendant desires to  
24 withdraw his previous plea of not guilty to the indict-  
25 ment and to plead guilty to the superseding information

1 with the understanding that Mr. Teitler has stated.

2 THE COURT: All right, Mr. Guardino, have you been  
3 advised and do you understand that if you want to go to  
4 trial you have the right to a speedy and public trial by  
5 a jury with the assistance of counsel?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And that at any such trial you would  
8 have the right to compulsory process or subpoenas to  
9 obtain witnesses in your behalf, and at any such trial  
10 you would have the right to be confronted by witnesses  
11 against you.

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand you have a right to  
14 plead not guilty to the superseding information?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand if you went to trial  
17 the government would have the obligation of proving  
18 your guilt beyond a reasonable doubt?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And if they fail to do so, the jury  
21 would have the right to acquit you on this information?

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand if your plea is  
25 accepted to this superseding information you would be



1           waiving your constitutional rights to a jury trial?

2           THE DEFENDANT: Yes, your Honor.

3           THE COURT: Do you understand that you will have  
4           the assistance of counsel at the time sentence is imposed  
5           if your plea is accepted?

6           THE DEFENDANT: Yes, your Honor.

7           THE COURT: Do you understand what you are charged  
8           with in this superseding information?

9           THE DEFENDANT: Yes, your Honor.

10          THE COURT: It is that you knowingly and intentionally  
11          possessed with intent to distribute approximately 26.91  
12          grams of cocaine on or about May 1, 1975.

13          THE DEFENDANT: Yes, your Honor.

14          THE COURT: Did you actually do that? Did you  
15          knowingly and intentionally possess cocaine on that day?

16          THE DEFENDANT: Yes.

17          THE COURT: Did you do it knowingly and willfully?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Have any promises of any kind,  
20          including any promises as to what sentence would be  
21          imposed, been made to you by the United States Attorney  
22          to induce your plea of guilty other than what he has  
23          heretofore outlined?

24          THE DEFENDANT: No, your Honor.

25          THE COURT: Have any promises of any kind,

1 including any promise or suggestion as to what sentence  
2 will be imposed, been made to you by your lawyer, by  
3 this court, or anyone else?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Has your lawyer expressed any opinion  
6 or made any prediction as to the sentence the court will  
7 impose?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you been threatened by anyone  
10 into entering a plea of guilty?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Are you entering the plea of guilty  
13 voluntarily and of your own free will and because you are  
14 guilty and for no other reason?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you discussed your plea of guilty  
17 with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you personally enter into any dis-  
20 cussion with anyone in the United States Attorney's  
21 office?

22 THE DEFENDANT: I don't understand.

23 THE COURT: Did you personally enter into any dis-  
24 cussions with anyone in the U.S. Attorney's office?

25 MR. TEITLER: Well, your Honor, there was one



1 occasion when the defendant and I had spoken about this  
2 case approximately two weeks ago, but that discussion  
3 certainly was not relevant to sentencing or promises.

4 THE COURT: The question is did the U.S. Attorney  
5 make any promises or representations other than those  
6 heretofore discussed with you on that occasion?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Do you know what the maximum sentence  
9 can be?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: What is it?

12 THE DEFENDANT: I believe one year to fifteen years.

13 MRS. ROSNER: Zero to fifteen years.

14 THE COURT: Fifteen years plus a fine, plus a  
15 special parole term, a minimum of three years.

16 THE DEFENDANT: I don't understand that.

17 THE COURT: Well, let's go over it so you fully  
18 understand it.

19 This is a first drug offense. It is fifteen  
20 years plus a \$25,000 fine, plus a minimum special parole  
21 term of three years. That special parole term could be  
22 with you for the rest of your life if I find the facts  
23 warrant it and decide that they are warranted in this  
24 case. So you could receive a sentence which would  
25 sentence you to jail for fifteen years, require you to

1 pay a \$25,000 fine, and you would be on special parole  
2 for the balance of your life. Do you understand that?

3 Also since you are twenty-four years of age you  
4 may, and I stress the word may, because it depends upon  
5 your record and all the facts, may be eligible for the  
6 Youth Correction Act.

7 You understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You should discuss this with Mrs.  
10 Rosner, and both of you should discuss it with the  
11 Probation Department when you have your probation inter-  
12 view. That is because you are twenty-four years of age.

13 Now having been advised as to your constitu-  
14 tional rights, the nature of the charge against you and  
15 the consequences of your plea, how do you plead to the  
16 superseding information?

17 THE DEFENDANT: Guilty, your Honor.

18 THE COURT: Guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: I find there is a factual basis for  
21 the plea and accept the plea of guilty to the super-  
22 seding information.

23 Now what is the bail situation?

24 MR. TEITLER: The government has no objection to  
25 the bail being continued, which has been set at \$5,000



1           personal recognizance bond.

2           THE COURT: Bail will be continued.

3           You and Mrs. Rosner should go to the Probation  
4           Department now and get your pre-sentence work started.  
5           Then you will be notified when to return approximately  
6           six weeks hence.

7           THE CLERK: Probation is coming up.

8           MRS. ROSNER: We will wait for them.

9  
10                   \*   \*   \*